

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CIVIL NO. 2:04CV91

SHARON E. SIDOTI,

Plaintiff,

Vs.

**JO ANNE B. BARNHART,
Commissioner of Social Security,**

Defendant.

ORDER

THIS MATTER is before the Court on Plaintiff's application for attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), filed January 10, 2005. Defendant filed a response to the Plaintiff's application on January 18, 2005, admitting the Plaintiff is entitled to an award of reasonable attorney's fees and paralegal costs for assistance, but contends the number of hours charged are excessive and should be reduced before an award is made.

Addressing Defendant's argument of an excessive number of hours charged,

[o]nce the district court determines that plaintiffs have met the threshold conditions for an award of fees and costs under the EAJA, the district court must undertake the task of determining what fee is reasonable. . . . Ideally, of course, litigants will settle the amount of a fee. However, where settlement is not possible, the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended. Counsel should submit evidence supporting the hours worked, and exercise billing judgment with respect to hours worked. Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority.

***Hyatt v. Barnhart*, 315 F.3d 239, 253 (4th Cir. 2002) (internal citations and quotations omitted).** On review of the Plaintiff’s motion, the Court finds the following hours were not reasonably expended by Attorney Bowling and disallows same: 1.0 hour on May 14, 2004, for the filing of the summons and complaint; and 1.0 hour on September 27, 2004, for filing the motion for summary judgment and brief. These acts would normally be clerical tasks and do not require the expertise of experienced counsel. ***Holdeman v. Pennhurst State Sch. & Hosp.*, 49 F.3d 939, 942 (3d Cir. 1995).** The Court also disallows the following hours: .5 hour for Attorney Martin on October 15, 2004, for reviewing the consent order since the same tasks were performed by Attorney Bowling on November 13, 2004; 2.0 hours on September 27, 2004, for proofreading and serving the brief on the Court by Attorney Martin, since these tasks duplicated paralegal time. The remaining attorney hours claimed are approved.

The Court next addresses the Defendant’s objection to paralegal charges. The relevant inquiry for requested paralegal fees is “whether the work was sufficiently complex to justify the efforts of a paralegal, as opposed to an employee at the next rung lower on the pay-scale ladder.” ***Spegon v. Catholic Bishop of Chicago*, 175 F.3d 544, 553 (7th Cir. 1999) (quoting *People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205*, 90 F.3d 1307, 1315 (7th Cir. 1996)).** In other words, “paralegal time is recoverable as part of a prevailing party’s award for attorney’s fees and expenses [but] *only to the extent that the paralegal performs work traditionally done by an attorney.*’ . . . ‘Otherwise, paralegal expenses are separately unrecoverable overhead expenses.’” ***Hyatt, supra*, at 255 (quoting *Jean v. Nelson*, 863 F.2d 759, 778 (11th Cir. 1988) and *Allen v. United States Steel Corp.*, 665 F.2d 689, 697 (5th Cir. 1982)).** The Court agrees with the Defendant that the number of paralegal hours requested is excessive and disallows 2.0

hours of the “draft statement of the case” and 2.0 hours of the “draft arguments,” for a total of 4.0 hours. The remaining paralegal charges are approved.

Having concluded that the attorneys have properly expended 7.8 hours in preparation and presentation of the Plaintiff’s case and that paralegal time expended is appropriately determined to be 20.1 hours; and further concluded that \$153.34 per hour is a reasonable charge for attorney fees, and that \$65.00 per hour is a reasonable charge for paralegal costs,

IT IS, THEREFORE, ORDERED that the Plaintiff’s motion for attorney’s fees under the EAJA is **GRANTED IN PART AND DENIED IN PART**, and Plaintiff is hereby awarded the sum of **TWO THOUSAND, FIVE HUNDRED TWO DOLLARS AND FIFTY-FIVE CENTS (\$2,502.55)** pursuant to the EAJA, 28 U.S.C. § 2412(d).

Signed: June 23, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

